

## Updated Informative Digest

**Sections Affected:** Amendments to sections 94502, 94507 to 94515, 94517, 94521, 94522, and 94524, Title 17, California Code of Regulations (CCR).

### Background

In 1988, the Legislature enacted the California Clean Air Act (the Act). The Act added section 41712 to the California Health and Safety Code, which requires the ARB to adopt regulations to achieve the maximum feasible reduction in volatile organic compounds (VOCs) emitted by consumer products. As part of the regulatory adoption process, the ARB must determine that adequate data exist for it to adopt the regulations. The ARB must also determine that the regulations are technologically and commercially feasible and necessary to carry out the Board's responsibilities under Division 26 of the Health and Safety Code.

To date, four regulations have been adopted by the ARB pursuant to Health and Safety Code section 41712. On November 8, 1989, the ARB approved a regulation for reducing VOC emissions from antiperspirants and deodorants (the "antiperspirant and deodorant regulation"; sections 94500-94506.5, Title 17, CCR). The ARB, then approved a more comprehensive regulation for reducing VOC emissions from 26 other categories of consumer products (the "consumer products regulation"; sections 94507-94517, Title 17, CCR), which was adopted by the Board in two phases. Phase I was approved on October 11, 1990, and Phase II was approved on January 9, 1992.

On September 22, 1994, the ARB approved the third regulation, the Alternative Control Plan for Consumer Products (ACP). The ACP is a voluntary, market-based regulation which employs the concept of an aggregate emissions cap or "bubble" from a group of products. The ACP regulation is designed to lower manufacturers' overall costs of reducing VOC emissions from consumer products while, at the same time, achieving emission reductions equivalent to the existing regulations. This regulation is contained in Title 17, CCR, sections 94540-94555.

The fourth regulation, the Regulation to Reduce VOC Emissions from Aerosol Coatings and Amendments to the ACP (the "aerosol coatings regulation"), was adopted by the Board on March 23, 1995. The aerosol coatings regulation limits the VOC content for 35 categories of aerosol paints. As part of this regulatory action, the Board also amended the ACP regulation to allow aerosol coating products to be included in an ACP. This aerosol coatings regulation is contained in Title 17, CCR, sections 94520-94528.

In addition to the four regulations mentioned above, on November 15, 1994, the ARB adopted the California State Implementation Plan for Ozone (SIP). The SIP is designed to satisfy the requirements of the federal Clean Air Act for ozone nonattainment areas in California classified as serious, severe, and extreme. The Consumer Products Element of the SIP is a multifaceted program composed of "near-term," "mid-term," and "long-term" control measures. The near-

term SIP measures are comprised of our existing consumer products regulations. The mid-term measures consist of regulations that will cover additional product categories not currently subject to the existing regulation. The long-term measures will rely on new technologies with components of market incentives and consumer education.

The SIP commits the ARB to achieve an overall 85 percent reduction in consumer product emissions by the year 2010. This reduction is necessary for the South Coast Air Basin and other areas to attain the federal ozone standard and meet the rate of progress requirements under the federal Clean Air Act. For consumer products, the near-term measures will contribute about 30 percent of the needed emission reductions by the year 2000, while the additional reductions will come from the mid-term and long-term measures and will occur after the year 2000.

On November 15, 1994, the ARB submitted the consumer products regulation and the antiperspirant and deodorant regulation to the United States Environmental Protection Agency (U.S. EPA) as a SIP revision. On February 14, 1995, these regulations were approved by the U.S. EPA as revisions to the SIP.

### **Description of the Regulatory Action**

The Board adopted the following amendments:

#### **1. Postponement of the 25 percent standard for aerosol adhesives**

The consumer products regulation previously specified a 25 percent VOC standard for aerosol adhesives, effective January 1, 1997. The Board approved a postponement of the effective date of the 25 percent standard until January 1, 2002, a five year extension. The Board also adopted a commitment to hold a public hearing by June 1, 2000 to review and consider any appropriate modifications to the 25 percent VOC standard. Finally, the Board adopted a provision requiring that responsible parties for aerosol adhesives must, by March 31, 1999, provide specified information on product sales and composition, and a written update on research and development efforts. Reductions from an adopted consumer products measure have been identified that may be used to make up the lost emission reductions due to the postponement of the standard. This ensures that the emission reductions committed to in the SIP will not be compromised.

#### **2. Modification of the VOC definitions to exempt perchloroethylene as a VOC**

Identical definitions for "VOC" exist in the consumer products and aerosol coatings regulations. The Board modified the VOC definition in both regulations to exempt perchloroethylene. This action follows similar action in March 1996 by the U.S. EPA, which exempted perchloroethylene from their VOC definition.

### **3. Amendment of various regulatory provisions to enhance clarity and compliance.**

The Board amended several definitions and made various other changes to enhance clarity and correct typographical errors in the consumer products regulation. Amendments were made to the definitions for “Household Adhesive”, “General Purpose Adhesive”, “Contact Adhesive”, “Construction and Panel Adhesive”, “Flying Bug Insecticide”, “Crawling Bug Insecticide”, and “Charcoal Lighter Material.” The Board also clarified that charcoal lighter materials may not use the low vapor pressure exemption to meet the requirement for charcoal lighter material.

In addition, the Board adopted an amendment regarding dilution of products to address those products that are diluted with VOCs, as well as those that are diluted with non-VOC solvents or water. The Board also specified that manufacturers of products with no VOCs, or products containing VOCs at 0.10 percent by weight or less, be exempted from the requirement to date-code these products. Language was also adopted to prohibit erasing, altering, defacing, or otherwise removing or making illegible a date-code without express authorization from the manufacturer. In the Registration Section, an amendment was adopted to clarify that responsible parties are not required to supply information unless a specific request is made by the Executive Officer. Finally, a number of other clarifying and organizational changes to the existing regulatory language were also adopted.

### **4. Amendments to the test methods sections**

The Board adopted an amendment to the Test Methods Section of the consumer products regulation to prohibit creating, altering, falsifying, or otherwise modifying records in such a way that the records do not accurately reflect product formulation or manufacturing information. Another adopted amendment specifies that the results of Method 310 (discussed below) will take precedence over product records in situations where the records conflict with the test results.

As a separately-noticed item, the Board also adopted additional amendments to the test methods sections of the antiperspirant and deodorant regulation, the consumer products regulation, and the aerosol coatings regulation. The additional amendments replace some of the currently specified test methods with a new ARB Method 310.

### **5. Amendments to incorporate the changes to State law made by AB 1849**

The Board adopted amendments to incorporate the changes to State law made by Assembly Bill (AB)1849 (Stats. 1996; Chapter 766). The amendments extend the time manufacturers are allowed to sell non-complying products produced prior to the effective date of any VOC standard. This “sell-through” period is extended from 18 months to three years after each category’s effective date. The amendments incorporating the three-year sell-through period specified in AB 1849 were adopted not only for the consumer products and aerosol coatings regulations but also

for the antiperspirant and deodorant regulation. In addition, requirements relating to aerosol adhesives were added to the consumer products regulation to implement the provisions of AB 1849.

## **6. Reporting requirements related to the exemption for perchloroethylene**

The Board adopted reporting requirements related to the exemption of perchloroethylene from the VOC definitions in the consumer products and aerosol coatings regulations. These reporting requirements were added to section 94513(e) of the consumer products regulation and section 94524(c) of the aerosol coatings regulation.

### **Comparable Federal Regulations**

The U.S. EPA has published a proposed rule, *National Volatile Organic Compound Emission Standards for Consumer Products*, which appeared in the April 2, 1996, Federal Register (Vol. 61, No. 64, pages 14531-14543). The proposed rule specifies VOC standards for antiperspirants and deodorants and other consumer products (but not for aerosol coatings), and is similar to the ARB's consumer products regulation. However, differences exist between the ARB's regulation and the U.S. EPA's proposed rule; following is a brief description of the more significant of these differences. The U.S. EPA's proposed rule applies nationwide to consumer product manufacturers, importers, and distributors (but not retailers), while the ARB regulation applies to any person (including retailers) who "sells, supplies, offers for sale, or manufactures consumer products for use in the State of California." The U.S. EPA's rule does not regulate several product categories which are regulated under the ARB regulation. All of the VOC standards in the U.S. EPA's proposed rule have a standard effective date of September 1, 1996, whereas the VOC standards in the ARB regulation are phased in at various dates from 1993 to 1999. Unlike the ARB regulation, the U.S. EPA's proposed rule does not have a second tier of "future effective" VOC standards for any product category. Finally, the U.S. EPA's proposed rule has an unlimited "sell-through" period for non-complying products manufactured before the effective date of the standards, whereas the ARB regulation allows only a three-year sell-through period.

